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Legal Protection of Employee Wage Rights in Bankrupt Companies: Evidence from China

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Abstract

This study aims to identify the factors contributing to the legal protection of workers' wage rights in bankrupt companies in China, focusing on aspects that have not been grounded in social justice. This research is also to formulate and form a legal protection model for workers' wage rights in bankrupt companies based on social justice in Indonesia and China. This research is empirical. The research data is in the form of primary and secondary data (primary and secondary legal materials). The study results show that the factors that cause legal protection of workers' wage rights in bankrupt companies are not based on social justice and are as follows: the legal substance factor, namely the legal norms governing workers' wage rights and other rights. When a company goes bankrupt, there is non-uniformity in the priority hierarchy of creditors in the Bankruptcy Law, General Provisions on Tax Implementation Procedures, and Labor Laws. Another factor is the legal and structural factor, which only involves the trustee and supervisory judges in the settlement of bankrupt assets. The last factor is the legal culture, where participation in the payment of bankruptcy assets is minimal and the current economic system tends to be capitalist. Indonesia must take the Chinese government as an example; China places a premium on modifying labor standards to safeguard the rights and interests of workers in all circumstances and promote economic and social development.

INTRODUCTION

Bankruptcy is a legal process initiated by individuals or entities facing overwhelming financial distress and an inability to fulfill their outstanding financial obligations. The goal is that creditors' bills can be paid fairly, equitably, and accordingly. The bills are paid pari passu with pro-rata part to the extent that creditors should be treated equally and receive their fair share of the debtor's assets based on the proportion of their claims. However, in practice, the process is regulated based on the rating or priority of receivables that must be paid first, so this principle is only for concurrent creditors (Hidayah et al., 2021).

Article 39, paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligations for Payment of Debt states that from the date the bankruptcy decision is pronounced, wages owed before or after the bankruptcy declaration is pronounced are debts of the bankruptcy estate. If a debtor from a bankrupt company fails to meet their obligations to pay owed wages, severance pay, and other rights to workers or laborers as outlined by the Manpower Act, these unpaid amounts are categorized as debts associated with the bankrupt assets. As a result, the worker or laborer becomes a creditor in the bankruptcy proceedings. However, Article 39, paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations does not provide further explanation regarding the position of workers or laborers as creditors in bankruptcy cases. Therefore, clarification is still needed, particularly concerning the priority order for fulfilling the receivables of workers or laborers (Subiyanto, 2022).

According to Article 1132 of the Civil Code, there are creditors whose positions are prioritized. Article 1133 of the Civil Code stipulates that privileged receivables, such as mortgages, mortgages on land, and fiduciary guarantees, confer rights on preferred creditors. Therefore, the position of creditors with respect to the debtor's assets is dependent on the type of collateral they possess. However, there are exceptions to the order of creditors. Article 1132 of the Civil Code indicates that, unless otherwise specified by law, all creditors have the same status, unless they have valid reasons to take precedence over other creditors. In general, creditors can be divided into three categories based on the level of bankruptcy: separatist, preferred, and concurrent. According to Article 1134 of the Civil Code, creditors with special rights have superior status to others. Article 1149 of the Civil Code provides the legal opportunity that can be the premise for workers or laborers having special rights (Benoit et al., 2022).

According to Article 1149 of the Civil Code, wages are a general privilege, so their repayment takes precedence. Article 95, paragraph 4, of Law No. 13 of 2003 concerning Manpower implies that, in cases of bankruptcy, the wages and other rights of workers and laborers take precedence over other obligations. This prioritization implies that employee salaries and laborer wages must be settled before addressing other outstanding debts. As stated plainly in these provisions, the worker's or laborer's position takes precedence over the fulfillment of his receivables. Wages and severance pay are receivables subject to special privileges under Article 95, paragraph 4, of Law

No. 13 of 2003 regarding Employment and Article 1149 of the Civil Code. Even though the essence of the privilege takes precedence, the position of the privilege holder remains below that of lien and mortgage holders. Workers and laborers are ranked fifth among privileged creditors, behind tax bills, judicial fees, auction fees, and trustee service fees. The existence of separatist creditors necessitates the defeat of worker and labor privilege provisions despite the fact that this was a priority. Article 55, paragraph 1 of Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations makes this clear (Kartikawangi, 2017).

Article 55, paragraph (1), of Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations permits separatist creditors to exercise their executorial rights based on the executorial titles affixed to each object burdened with certain material guarantees. This authority begins on the 61st day after the bankruptcy decision is made and ends two months after the insolvent debtor is declared bankrupt. In addition to their privileges under Article 55, paragraph 1, creditors of separatists also enjoy privileges under Article 59, paragraph 1, and Article 138 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Not only is the position of employees undermined by separatist creditors but also by tax costs. According to James Purba, the position of taxes as the top creditor is due to the fact that Law Number 6 of 1983, as amended by Law Number 16 of 2009 regarding General Provisions and Tax Procedures, expressly specifies that taxes take precedence over other creditors (OCallaghan, 2010).

Article 21 of the Tax Law expressly specifies that taxes are higher than those of separatist creditors, although the position of workers in bankruptcy is not explicitly stated. According to Article 60 of Law No. 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations, it is becoming increasingly apparent that taxes are higher than separatists. The term separatist refers to an individual or a group that seeks to achieve independence or greater regional autonomy by breaking away from a larger country or political entity. The tax can proceed from the sale of collateral objects pledged to the separatists. Even though Article 28D of the 1945 Constitution states that everyone has the right to receive rewards and fair and appropriate treatment in work relationships, the 1945 Constitution guarantees that the state will protect and fulfill the rights of its citizens. Article 28 paragraph (1) of the 1945 Constitution, which states that everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as an equal treatment before the law, and Article 28 paragraph (2) of the same constitution, which states that everyone has the right to work and receive rewards, fair treatment, and be worth his or her wages stipulate the right to legal certainty and the right to proper protection in employment relations, respectively (Aysun, 2015; Hidayah & Anggraeny, 2023).

The right to receive wages is also recognized as the right to welfare, as stated in Article 38, paragraph 4 of Law Number 39 of 1999 concerning Human Rights, which states that every person, male and female, who performs work commensurate with their human dignity has the right to fair wages commensurate with his or her achievements and can ensure the continuation of his or her family life. In addition, the

Indonesian government has ratified ILO Convention No. 111 of 1958 regarding discrimination in employment and occupation via Law No. 21 of 1999 in order to safeguard the human rights of workers and laborers. The position of laborers in bankruptcy is governed by two provisions in Law No. 13 of 2003 concerning Manpower and Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Rakhman, 2018).

The problem, however, is that the two configurations are distinct. Labor Law Number 13 of 2003 has regulated the ability to precede workers. In other words, laborers have priority over the payment of their wages compared to other creditors. This differs from the provisions of Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations, which regulate separatist creditors whose fulfillment is prioritized, or, in other words, is privileged, so that they can execute their collateral by having it suspended for a maximum of ninety (ninety) days from the date the bankruptcy declaration decision was made (Prijadi et al., 2022). In this regard, the Constitutional Court's Decision No. 67/PUU-XI/2013 addresses the status of labor rights. In this decision, the Court provides an interpretation or clarification on the constitutional aspects related to labor rights. The decision considers Article 95, paragraph 4, of Law No. 13 of 2003 concerning Manpower, which states that in the event of a company being declared bankrupt or liquidated in accordance with applicable laws and regulations, wages and other worker rights take precedence over other obligations. Aside from that, according to his explanation, prior payment means that employees' or laborers' wages must be paid in advance of other debts (Rahmawati & Rukmana, 2022). Specifically, the phrase "Priority with payment," violates employees' rights at their place of employment and could result in bankruptcy if a court rules against it. The phrase "pay first" has been interpreted in numerous ways. As a result, workers are placed in a precarious position and must be compensated by separatist creditors, whose practice takes primacy over payment if a company declares bankruptcy (Priyono et al., 2020).

The implementation of the Constitutional Court decision has been described in Government Regulation 78 of 2015 concerning wages. Article 37, paragraph 1, of Government Regulation Number 78 of 2015 states that for an entrepreneur who is declared bankrupt based on a court decision to declare bankruptcy, the wage and other rights of the worker or employee are debts that have priority in payment. Furthermore, Article 37, paragraph 2, also stipulates that workers and laborers' wages, as referred to in Paragraph 1, are prioritized for payment following the provisions of laws and regulations. Whereas Article 37, paragraph 3, regulates the other rights of the worker or laborer as referred to in paragraph 1, priority is given to payment after payment of creditors holding material security rights. Therefore, there are still problems with paying workers' wages to companies declared bankrupt by the court (Agustia et al., 2020).

For instance, on the basis of the Commercial Court Decision at the Central Jakarta District Court Number 77/Pailit/2012/PN.Niaga.Jkt.Pst, dated January 30, 2013, a Commercial Court judge declared PT. Metro Batavia Air bankrupt on that date. In this

case, PT. Metro Batavia Air is in arrears of Rp 150 billion for the salaries and severance pay of 3,200 employees, and the payment of employee wages has yet to be made. Second, PT Pazia Retailindo Indonesia, located in the Jatake industrial area of Tangerang City, was declared bankrupt on August 16, 2016, by a decision of the Commercial Court at the Jakarta District Court Number 44/Pdt.Sus-Pailit/2020/PN Niaga.Jkt.Pst. In this case, PT Pazia Retailing is in arrears of payment of wages to 1,450 employees to date. The delay was caused by Bank BNI 46 as the most significant bill holder of IDR 147,000,000,000 (one hundred forty-seven billion) to PT. UFU at the Commercial Court at the Central Jakarta District Court.

Third, PT. Saripari Pertiwi Abadi was formed on June 16, 1997, and specifically works in the field of drilling, drill, workover, and good services, as well as other support services such as those related to geophysics, wireline booking, cementing, and installing maintenance services, which have been declared bankrupt by the Central Jakarta Commercial Court under Decision Number 35/Pdt.Sus-Pailit/2021/PN.Niaga.Jkt.Pst. In that case, PT. Saripari Pertiwi Abadi is in arrears of the payment of wages amounting to 9,320,000,000 (nine billion, three hundred, and twenty million rupiahs) to 252 employees, and the payment of employee wages has yet to be made.

Fourth, on April 22, 2015, PT. Jaba Garmindo was declared bankrupt by the Central Jakarta District Court with Decision No.04/ Pdt.Sus/ Pailit/ 2015/ PN. Niaga. Jkt.Pst due to being entangled in debt with banks as creditors. PT. Jaba Garmindo has debts to creditors of IDR 1,415,569,177. (one billion, four hundred and fifteen million rupiah, five hundred sixty-nine thousand, one hundred and seventy-seven rupiah)Moreover, invoices owed to suppliers are incalculable in value. In that case, PT. Jaba Garmindo is in arrears of 5.5 million euros in wage payments to 2,000 employees, and the payment of employee wages has yet to be made. Fifth, PT. United Coal Indonesia, located at Sudirman Plaza Marein, 11th Floor, Jalan Jenderal Sudirman Kav. 76–78, Jakarta, operates as a coal mining company in Samarinda. PT United Coal Indonesia was declared bankrupt on October 15, 2014, based on the Decision of the Commercial Court at the Central Jakarta District Court No. 55/Pdt.Sus-PKPU/2014/PN. Niaga.Jkt.Pst.Jo.No.32/Pdt.Sus. Bankruptcy/ 2014/PN. In that case, PT. United Coal Indonesia is in arrears of wages amounting to 1,120,000,000 (one billion, one hundred and twenty million rupiahs) to 101 employees, and the payment of employee wages has yet to be made. Sixth, Sudiyarto, as the cassation or bankruptcy applicant in the case of PT. Merpati Nusantara Airlines (Persero), was an employee who was honorably discharged. Merpati Nusantara Airlines (from now on referred to as PT. MNA) was declared bankrupt on July 17, 2014. Consequently, PT. MNA must provide an amount of Rp. 406,674,590 (four hundred and sixty-six million, six hundred and seventy-four thousand, five hundred and ninety rupiahs) consisting of normative rights (salary, salary fines, social security contributions) and severance pay considered as debts.

Therefore, it is essential to conduct a study of the issue of the legal protection of workers' wage rights in bankrupt companies. The urgency of this review can be based

on several important aspects, namely, that the legal protection model for workers' wage rights in bankrupt companies has not provided justice for workers. This can be seen from the various bankruptcy decisions above. The aforementioned decisions overturn Constitutional Court Decision Number 67/PUU-XI/2013, which established that in cases of company bankruptcy, the payment of owed wages to workers is given priority over all types of creditors, including bills from separatist creditors, state rights, auction offices, and government-formed public bodies. Moreover, it was determined that other workers' rights would be paid before all forms of bills, with the exception of bills from separatist creditors, state rights, auction offices, and government-formed public bodies. The disharmony between labor and bankruptcy law also causes the weak legal protection of workers' wage rights in bankrupt companies. Delays in payment of workers' wages in bankrupt companies are often based on the Law of the Republic of Indonesia Number 37 of 2004 concerning bankruptcy and ignore the Law of the Republic of Indonesia Number 13 of 2003 concerning labor rights when a company is bankrupt (Izzati et al., 2022). In the context of bankruptcies, Law Number 13 of 2003 is sometimes overlooked because bankruptcy law tends to give priority to the interests of creditors and the financial aspects of the process.

Thus, there is a clash between fulfilling workers' rights, which take precedence under labor law or bankruptcy law. Payment delays are also often based on the legal principle that there is a principle of *lex specialis derogate legi general*, which means that more specific regulations defeat more general regulations, so companies often use bankruptcy regulations. According to Asmorojati et al. (2022), the legal protection model for workers' wage rights in bankrupt companies not only highlights regulatory imbalances but also contradicts Article 28 D paragraph (2) of the 1945 Constitution. This constitutional provision guarantees everyone the right to work and receive fair and appropriate compensation and treatment in employment relationships. This constitutional provision is also in line with the Chinese constitution.

In the China Enterprise Bankruptcy Law 1986 (For Trial Implementation) (EBL, 1986), the Chinese government does not regulate differences in workers' positions regarding wage payment in bankrupt enterprises. The Chinese Corporate Bankruptcy Law does not regulate employees with the highest priority. After secured creditors and bankruptcy costs, super-priority employees now take precedence over taxes and other unsecured creditors. Workers' claims (including claims to wages, leave or vacation pay, paid absence benefits, and severance pay) are a priority class in the majority of international insolvency regimes. In certain instances, these claims rank above the majority of priority claims, primarily taxes and social security. China places a significant emphasis on employee rights protection. It divides creditors into four categories: guaranteed claims, employee claims for wages, health insurance, and other compensation, payable taxes, and unsecured claims. To apply for court confirmation of a plan, an employee's claim must be entirely satisfied under the China EBL of 2006. In contrast, a plan can be proposed under Chapter 11 even if the claim is adversely affected, so long as the classification of the claim does not involve unjust discrimination. In the event of liquidation, employee claims take precedence over

creditors' claims in the payment schedule. This research is also to formulate and form a legal protection model for workers' wage rights in bankrupt companies based on social justice in Indonesia and China.

METHOD

The research utilizes an empirical legal research method, specifically focusing on examining the application of positive law in society, which is protected by legal provisions (Novikasari et al., 2021). Both primary and secondary data sources are employed in this study. Primary data was obtained directly from original sources through document analysis, including legal documents such as the 1945 Constitution of the Republic of Indonesia, Law Number 13 of 2003 concerning Manpower, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 37 of 2021 concerning the implementation of a Job Loss Guarantee Program, Government Regulation Number 36 of 2021 concerning Wages, Government Regulation Number 35 of 2021 concerning work agreements for specific time, outsourcing, working time and break time, and termination of employment, Government Regulation Number 34 of 2021 concerning the Use of Foreign Workers, Government Regulation Number 60 of 2020 concerning the Disability Service Unit in the Employment Sector, Government Regulation Number 49 of 2020 concerning Adjustment of Employment Social Security Program Contributions During Non-Natural Disasters and the Spread of Corona Virus Disease 2019 (Covid-19) (Siboy et al., 2022). Furthermore, secondary data is collected from various literature sources and online databases (Kusumaningtyas et al. 2022; Djermani et al., 2023; Yoland et al., 2023; Noor & Sidiana, 2023).

RESULTS AND DISCUSSION

Legal Protection of Employee Wage Rights in Bankrupt Companies in Indonesia

Legal development and protection are built systemically, starting with substance, structure, and legal culture. Legal substance is a norm that forms the basis of human behavior in a society within a particular legal system. Norms are the rules of law and regulations that guide people in their actions. In the context of the legal protection of workers' rights, what is referred to as legal substance are the norms or legal propositions governing workers' wage rights, and how these norms are formed is a pattern of legal substance. The labor rights are recorded in the Labor Law, the Civil Code, the Law concerning Bankruptcy and Suspension of Debt Payment Obligations, the Social Security Law, the Job'Creation Law, and legally binding court decisions, such as the decisions of the Constitutional Court or the jurisprudence of the Supreme Court. Can these norms be considered to have protected workers' wage rights and later be considered based on social justice values (Neise & Revilla Diez, 2019)?

The previous section noted that when a company goes bankrupt, the right to wages has at least been regulated in the Manpower Law, the Bankruptcy Law, the PKPU, the Job Creation Law, and the Constitutional Court's rulings. The Labor Law

states that unpaid labor wages will become the company's debt. When the company goes bankrupt, the debt still has to be paid and has priority over other debts from other creditors. Substantively, the legal norms governing labor rights and other rights when a company goes bankrupt are not uniform. The non-uniformity in question is the existence of differences regarding the hierarchy of priorities. According to the Bankruptcy and PKPU Laws, those with priority are creditors who hold material guarantee rights or separatist creditors. In contrast, the Law on General Provisions for Tax Implementation Procedures says that what takes precedence is billing the tax country. According to the Labor Law, labor rights are a priority debt. Constitutional Court's Decision No. 67/PUU-XI/2013 states that the right to wages is a priority debt without work. Juridically, this decision is final and binding (Rochmatullah et al., 2022).

The Constitutional Court's decision is a judicial review of the norms of labor law, not the norms of bankruptcy law, let alone the general provisions on tax procedures. This means the Constitutional Court's decision, regarding the amendment to Article 95, paragraph 4 of Law No. 13 of 2003, is that it only permits changes to be made in the Article, while leaving the rest of the law unchanged. However, other regulations in the decision are taken into consideration. Therefore, substantively, differences in norms in laws and regulations remain a substantial problem in the legal protection of workers' wage rights. If applying the Job Creation Law as the newest law that regulates labor rights, it should be noted that the Constitutional Court has suspended the implementation of the Job Creation Law. The Job Creation Law is formally unconstitutional. Therefore, the substance of this law still needs to be solved (Carney et al., 2021).

After the Constitutional Court's decision No. 67/PUU-XI/2013 on labor rights that become debts in bankrupt companies, labor wages, according to the Labor Law, are the priority that must be paid without any conditions because this is directly related to the fate and lives of workers and their families. Previously, according to the Labor Law, the phrase "pay first" was not valid because of the existence of classification of creditors based on Articles 1131 to 1138 of the Civil Code, Law No. 20 of 2007 concerning the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP), and Law No. 37 of 2004 concerning Bankruptcy and PKPU, which divides creditors into five groups (Raya et al., 2021).

The five creditor groups mentioned above, based on Article 1134, paragraph 2, in conjunction with Article 1137 of the Civil Code and Article 21 of the Civil Code, state creditors for tax receivables have a position above separatist creditor. The position of labor wages is below bankruptcy costs and trustee service fees, which means workers have to be more patient and stay behind after bankrupt model assets are used to pay taxes, creditors holding material guarantees (separatist creditors), bankruptcy costs, and trustee service fees. With this hierarchy, there is no social justice for the workers themselves, while workers are, socio-economically, positioned as the weakest. This is where the problem lies when a company goes bankrupt, and the trustee handling bankruptcy assets emphasizes the distribution of the bankruptcy model after paying taxes to separatist creditors, bankruptcy costs, and fees for himself. The bankrupt assets are limited in number, labor rights often cannot be accommodated optimally by the trustee in charge. In such conditions, workers become victims of the collapse of a company (Jaidi et al., 2022).

Whether the trustee likes it or not, labor is relegated due to this priority pattern. It is, after all, a normative requirement. This does not imply that the trustee is not in favor of labor, but if he deviates from the norm, he will face legal opposition from creditors with priority rights. The trustee acts as a substitute for the debtor in managing and settling bankruptcy assets, but he must act in accordance with the law and not as the asset's proprietor. This indicates that the trustee cannot function as a company obligated to protect and accommodate the rights of workers outside of the scope of the law. Typically, problems of this nature occur among employees who depend solely on the wages they receive from their job. Consequently, the government should be concerned with how to respond to the protection of workers' rights following a bankruptcy ruling and ensure that the interests and rights of workers continue to be protected (Dachyar et al., 2020).

Law Number 13 of 2003 concerning Manpower, specifically Article 165, does not include explicit provisions or guidelines regarding the imposition of criminal or administrative penalties in cases where a bankrupt company fails to fulfill its obligations to pay employees' rights. To enforce the law without imposing any sanction, mediation, negotiation, or seeking civil remedies through the court system are critical. This means that the Labor Law contains norms regarding workers' liberties from a legal standpoint. Nevertheless, the legal protection of employees' rights is not bolstered by criminal or other administrative regulations that ensure the fulfillment of these preferential rights. Legal protection can only be accomplished in a civil manner. Specifically, workers may initiate a lawsuit against the responsible trustee. This case is pending in the Court of industrial relations. This lawsuit will only have merit if the company has adequate assets and labor rights taking precedence over other creditors (Wasiaturrahma et al., 2020).

The criminal mechanism is not a solution that safeguards employees' rights. When a company is declared insolvent, there is no assurance that wage rights will be honored. The priority scheme does not guarantee the reimbursement of rights because the cost of repayment depends on the bankruptcy estate's assets. This reliance on bankruptcy assets has not solved the issue because, in a number of instances, these assets have been insufficient, and most of the time there are obstacles to resolving them. They do not sell at all for an extended period (Fidiana et al., 2023).

Legal substance must reflect social justice in its multifarious provisions governing workers' wage rights, which are dispersed among numerous laws. The principles of social justice for all Indonesians are derived from the Pancasila values, as it has been explained that Pancasila is the source of legal sources and carries a fundamental value; therefore, in order to be considered the basis of statutory regulation, its values must be reduced to legal norms. In the event of bankruptcy, the payment of employee wages is taken over by a trustee appointed by the court and supervised by a judge, thereby supplanting the authority of the insolvent company. According to the Labor Law, labor rights, such as wages and other benefits, have priority over payments. In this context, the Constitutional Court's ruling that workers' wages always take primacy over other debts provides the legal substance (Kusumaningtyas et al., 2022).

Article 39, paragraph (2), of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations stipulates that labor wages for the period before and after bankruptcy are included in the debt of bankruptcy assets for which

payments can be concurrent with bankruptcy management costs such as case fees, auction fees, and trustee service fees. Not all laws are grounded in social justice, the fifth precept, at their core. Therefore, has there been protection for labor rights based on social justice at the structural level? The level of structure refers to the authority of the law enforcement apparatus and power structures to implement social justice by enforcing labor rights that become obligations in the event of bankruptcy (Hidayah et al., 2021).

The Dunlop framework commonly is used to ascertain the available recourse for breach of contract; particularly in instances involving damages, industrial relations can be comprehended and studied in Singapore. There are at least three actors in the structure: the government, labor unions, management, and tribunals. The purpose of Law Number 13 of 2003 concerning Manpower is to exhaustively regulate the rights and responsibilities of both employers and workers/laborers. The Act imposes a greater number of obligations on employers than on employees. This illustrates the vast disparity in economic capabilities and the distinctions in responsibilities between employees and employers. In this situation, the employer is the dominant party compared to the employees. Article 3 of Law No. 13 of 2003 on Manpower asserts that human resources development is conducted in accordance with the principle of integration through cross-sectoral functional coordination (Novikasari et al., 2021).

The principles of human resource development parallel those of national development, particularly democracy, fairness, and equity. This principle's applicability stems from the fact that human resources development is a multidimensional endeavor involving multiple stakeholders, including the government, employers, employees, and the general public. Consequently, the development of human resources should be conducted in an integrated manner within a framework of mutually supportive cooperation. The principle of labor law is integration via functional coordination between central and regional sectors (Amelia et al., 2023; Asmorojati et al., 2022).

Based on Article 4 of Law Number 13 of 2003 concerning Manpower, human resources development aims to: (1) empower and utilize human resources optimally and humanely; (2) realize equal distribution of employment opportunities and provision of manpower following the needs of national and regional development; (3) provide protection to workers in realizing welfare; and (4) improve the welfare of workers and their families. Employment development, as above, requires government intervention to implement and facilitate all the required instruments, starting with legal instruments and repressive mechanisms when needed. Because Referring to Article 102, paragraph 1, of Law Number 13 of 2003 concerning Manpower, the function of the government in carrying out industrial relations is to establish policies, provide services, carry out supervision, and take action against violations of labor laws and regulations. Therefore, one state institution that plays a central role in realizing the above goals is the Ministry of Manpower (Dimyati et al., 2022).

The field of employment was initially delegated to the local government's role to supervise and take action against violations of applicable laws and regulations. Article 14 paragraph 1 implies that the field of employment was initially delegated to the local government's role to supervise and take action against violations of applicable laws and regulations. According to Article 14, paragraph 1 of Law No. 32 of 2004 regarding regional government, it is mandated that the district or city region has the authority

over employment services within its jurisdiction. Over time, fundamental changes occurred after the promulgation of Law Number 23 of 2014, as amended to Law Number 2 of 2015, concerning the regional government (Emovwodo, 2022).

According to the new Regional Government Law related to labor inspection, since 2015, labor inspection has become the central government's authority. In this law, labor inspection is a mandatory affair and is concurrent between the central and provincial governments. Labor inspection is no longer in the hands of the district or city but is drawn to the main level. However, the regulation and implementation are carried out by the provincial government (Dimyati et al., 2022). As for the settlement of industrial relations disputes, it is still under the authority of the regional government based on Law Number 13 of 2003, Article 176, Paragraph 1, that labor inspection is carried out by labor inspectors who are competent and independent to ensure the implementation of labor laws and regulations. The aim is to oversee the enactment of labor laws and regulations. Labor inspectors play a strategic and decisive role in and serve as the spearhead of the realization of harmonious, dynamic, and just industrial relations between companies and workers (Lahiri-Dutt et al., 2021).

In upholding labor law, labor inspectors can conduct inspections on the implementation of laws and regulations in companies, workplaces, and the development of employers and workers that follow established inspection standards. This is categorized as preventive action (Rismawati & Jaelani, 2023). Meanwhile, an investigative process by Employment Civil Servant Investigators (PPNS) against allegations of labor crimes committed by employers is taken as a repressive measure (Asmorojati et al., 2022). The repressive mechanism is carried out if the previous coaching action is not heeded and carried out by the entrepreneur. Labor Inspection regulations are the responsibility of the central authority. This means that employment is the central authority in determining substantial policies at the structural level (Bestari et al., 2022).

Labor inspectors are the state's representatives in industrial relations. The Government of Indonesia protects workers, for example, by drafting various laws, government regulations, and ministerial decrees as substantive instruments of protection for workers. In addition, the government is a facilitator in resolving workers' disputes with employers and seeking an agreement between the two parties to realize the rights stipulated in the law. Until now, conflicts of interest between workers and employers still occur. Therefore, the Constitution mandates that the state not only protect the entire Indonesian nation but also protects workers' rights as stated in the Constitution and its regulations. The state's existence is significant, especially in determining regulations for the welfare of workers with a weaker position than that of the company (Harada et al., 2022).

The government serves as the main structure for law enforcement and the factor that has the most role in protecting workers' wage rights is the labor union. As a member of the ILO, Indonesia has adopted the principles of freedom of association in Law No. 21 of 2000 concerning trade unions and labor unions. This allows the formation of more than one union. This law has led to the proliferation of labor unions in various companies. Unfortunately, the presence of more than one labor union in one company often triggers labor disputes, which can result in strikes. Non-effective movement for the union itself. This contradicts the purpose of passing Law No. 21 of

2000. Although the freedom of trade unions has been guaranteed in the UN/ILO Convention, the 1945 Constitution, and Law No. 21 of 2000, this freedom of association still has to be fought for (Pelzl & Poelhekke, 2021).

Trade unions do have freedom as guaranteed by laws and regulations, but this freedom must be negotiated with the company. This freedom formally exists, but this formal freedom does not mean that it can guarantee the fulfillment of all labor demands, especially the issue of wage rights. A labor union in a new company can be formed if it has at least ten members. Meanwhile, there are generally fewer than ten workers in the informal sector; there is no obligation to form a trade union; and almost no unions or workers in the informal sector are recorded. Trade unions in various countries have at least three functions, namely: (1) trade unions as the institutions that negotiate with employers regarding wages and working conditions; (2) trade unions as part of a social movement that aims to improve the living conditions of workers; and (3) trade unions as a pressure group that influences parliament, government, and public administration as long as it concerns the interests of workers (Danquah et al., 2021). Throughout the 20th century, the trade union position has been generally accepted. Its existence has become a solid and integrated part of its legal and institutional framework. Therefore, in certain situations, labor unions have enough bargaining power to balance the will of the company by way of negotiation, for example, about wages, working hours, and working conditions. Law No. 21 of 2000 explains that labor unions are organizations formed from, by, and for workers both in and outside companies that are free, open, independent, democratic, and responsible for fighting for, defending, and protecting the rights and interests of workers and improving the welfare of workers and their families (Neilson, 2022).

Legal Protection of Employee Wage Rights in Bankrupt Companies in China

The Labor Law of the People's Republic of China and the Regulation on Minimum Wage in Enterprises contain stringent wage distribution standardization provisions. A nationwide minimum wage system has been implemented, and more than 10,000 companies have begun experimenting with experimental wage schemes through collective bargaining. By the end of 2001, their annual per capita income had risen to 10,870 yuan, 16.3 times what it was in 1978. In real terms, the average annual growth rate was 5.5% after accounting for inflation(X.-Y. Dong, 2005).

The average minimum wage in China increased annually from 2004 to 2009. The average nominal value increased by 80% across all districts, from 310 RMB to 562 RMB. In this period, the Eastern region had the greatest minimum wage, averaging 522 RMB per month, followed by the West (436 RMB) and the Central (424 RMB). Intriguingly, the annual growth rates of the minimum wages in all three regions are roughly 13%. Third, minimum wage increases can occur more frequently than annually. For instance, Beijing raised its minimum wage first in January and July 2004, followed by Jiangsu in April and July 2008 (Lu & Dandapani, 2023).

China has distinct pay preferences for men and women. Male workers have a ten-percentage-point lower average minimum wage ratio and a fifteen-percentage-point higher employment-to-population ratio than women, indicating that Chinese female workers are disadvantaged relative to their male counterparts in the labor market (Lyu et al., 2023). As expected, the East region had the lowest minimum wage-

to-average wage ratio (0.276) and the maximum employment-to-population ratio (607) of the three regions. The wage disparity between men and women is more significant in rural areas and the private sector than in urban areas and the public sector. In addition, we discover that the gender pay gap in China has proliferated in recent years. As of September 1, 2021, a return to the minimum wage system has increased employee wages based on their region (Zhu et al., 2022). As of 28 February 2022, Shanghai's minimum wage in 2021 is 2590 yuan (Rp 5890,071), Beijing's is 2320 yuan (Rp 5276,048), and Tianjin's is 2180 yuan (Rp 4957,666). Several regions, including Hubei Class D (21.60%), Hubei Class B (20.00%), Hubei Class C (19.57%), and Ningxia Class C (18.24%), experienced significant minimum wage increases compared to the previous year. The following are the aggregate minimum wage increase statistics:

Table 1
Worker Minimum Wage Increase in China in 2020 and 2021

Regional	Class	Monthly (yuan)		O'clock (yuan)	
		2020	2021	2020	2021
Shanghai		2480	2590	22	23
Beijing		2200	2320	25.3	24
Zhejiang	A	2010	2280	18.4	22
	B	1800	2070	16.5	20
	C	1660	1840	15	18
	D	-	1500	13.6	-
Jiangsu	A	2020	2280	22	18.5
	B	1830	2070	20	16.5
	C	1620	1840	18	14.5
Tianjin		2050	2180	22.6	20.8
Hubei	A	1750	2010	18	19.5
	B	1500	1800	16	18
	C	1380	1650	14.5	16.5
	D	1250	1520	13	15
Shaanxi	A	1800	1950	18	19
	B	1700	1850	17	18
	C	1600	1750	16	17
Ningxia	A	1660	1950	15.5	18
	B	1560	1840	14.5	17
	C	1480	1750	13.5	16

Xinjiang	A	1820	1900	18.2	19
	B	1620	1700	16.2	17
	C	1540	1620	15.4	16.3
	D	1460	1540	14.6	15.4
Heilongjiang	A	1680	1860	16	18
	B	1450	1610	13	14
	C	1270	1450	12	13
Jiangxi	A	1680	1850	16.8	18.5
	B	1580	1730	15.8	17.3
	C	1470	1610	14.7	16.1
Tibet		1650	1850	16	18
Gansu	A	1620	1820	17	19
	B	1570	1770	16.5	18.4
	C	1520	1720	15.9	17.8
	D	1470	1670	15.4	17.4

Source: Data processed by the author based on data from the Human Resources and Social Security Department of China.

The data presented above indicates that the minimum wage for Chinese employees has remained relatively constant; in some regions, it has remained unchanged. In accordance with Chinese labor regulations, a work unit must pay its employees higher compensation for work performed outside of normal working hours (overtime). The quantity of overtime pay that employers are required to pay varies depending on the circumstances surrounding the overtime request (Hoi Yee, 2006). The prolonged working hours are arranged and the work unit must pay at least 150% of the regular wage. In addition, work units must pay no less than 200 percent of regular compensation if work is scheduled on a holiday and no other day is available. Work performed on national holidays is compensated at a rate of at least 300% of regular compensation (Lin, 2021).

Article 47 states that each work unit, based on the characteristics of its production and business activities as well as its economic results, determines independently the form of wage distribution and wage rate for its unit, so long as it complies with the law. In addition, Article 48 specifies that China has a minimum compensation guarantee system. The provincial, autonomous region, or municipal government directly under the Central Government will then determine these specific minimum wage standards and submit them to the State Council for the record (W. Xu & Uddin, 2008). As a result, the work entity must pay its employees a wage that meets or exceeds the local minimum wage requirement. In determining the minimum wage that must be paid to workers, the following factors are considered as a whole: the

lowest cost of living for the workers themselves plus the average number of family members they support; the average wage rate of society as a whole; labor productivity; work situation; and, of course, the differences in the economic development conditions of each region (Liu, 2011).

Workers have a claim to the wages established by the company. Therefore, employees' wages may not be misappropriated or delayed for no apparent reason. That is, employees receive their monthly wages in the form of cash. Workers continue to receive wages if they are absent from work for legally mandated reasons, such as marriage or bereavement leave or participation in legally mandated social activities. Since 1994, China's bankruptcy system has witnessed reforms toward a market orientation. The purpose of these reforms is to extend the application of bankruptcy law beyond state-owned enterprises. After the reform, the bankruptcy regime became broadly applicable to all companies. Legislators in China must be made aware of cross-border insolvency. Consequently, these two laws contain no provisions that specify how cross-border insolvency should be addressed. However, the absence of specific cross-border insolvency laws does not imply that there are no applicable rules for cross-border insolvency challenges that materialize from reality (B. Dong et al., 2022).

Reform of China Enterprise Bankruptcy Law 1986 (For Trial Implementation) (EBL, 1986) – China's Corporate Bankruptcy Law, with its goal to rival the bankruptcy laws of other developed nations, became the primary motivator of reforms in economic sectors for other Chinese. Until the promulgation of the Enterprise Bankruptcy Law of the People's Republic of China (EBL, 2006), the bankruptcy regime continued to be refined. However, the EBL 2006 itself is considered a "Westernization" product due to the contributions of foreign experts and international organizations; such contributions are uncommon in Chinese commercial law. In particular, Chapter 8 of the EBL China 2006 on corporate reorganization. Where the content of Chapter 8 was influenced by Chapter 11 of the United States Bankruptcy Code (Zhang, 2010).

The EBL's 2006 reorganization regime has much in common with Chapter 11 of the US Bankruptcy Code, such as the debtor's overriding roles and duties, acceptance of the reorganization plan by different classes, and the discretionary powers of the courts. However, there are also three notable differences between the 2006 China EBL and Chapter 11 of the US Bankruptcy Code, namely 1) the party entitled to submit plans, 2) the classification of creditors, and 3) procedures for "Renegotiation" of differing creditor classes. First, debtors and administrators enjoy exclusive rights to propose reorganization plans without competing plans from other interested parties under the 2006 China EBL (Jemala, 2022).

When bankruptcy occurs, a company can terminate employment. This is done in the context of reorganizing following the provisions of the Company Bankruptcy Act. Article 41 of the Labor Contract Law of the People's Republic of China stipulates that if a work unit needs to terminate the employment of more than 20 people, or less than 20 people--more than 10 percent of the company's total employees, it can do so after explaining the situation to the union or all of its employees 30 days in advance and seek their opinion and submit their plan for the termination of employment to the administrative labor department (Y. Xu, 2018).

Termination of employment in a state of bankruptcy is also regulated in Article 27 of the Labor Law of the People's Republic of China, which states that in the case of a work unit, it is essential to reduce the number of workers who are on the verge of bankruptcy and experience statutory stabilization or experience difficulties in production and management and the employing unit should explain the situation to the employer. The union or all its staff and workers 30 days in advance seek their opinion and report to the labor administration department before reducing the number of workers. After termination of employment due to bankruptcy, workers' salaries are only sometimes paid in full. This is, of course, due to the company's financial situation. The 2006 China EBL provides for legal protection of employees' rights. First, there is the provision that the People's Court complies with the law, safeguards the legitimate rights and interests of company staff and workers, and investigates the legal responsibilities of bankrupt asset management personnel. Then, Article 11 of the 2006 China EBL states that if a People's Court decides to accept a bankruptcy application, the decision will be handed down to the applicant within five days of the decision (DePamphilis, 2019).

In other cases where the government is involved in bankruptcy, the Summary identifies that having an "insolvency integrated coordination mechanism" would be beneficial where the government and the courts can work well together. The government is expected to support the courts and provide employee protection in bankruptcy. It is a protection mechanism that allows the Court to consider the best interests of employees and use its power to protect them, in terms of how the position of workers in the payment of wages where the company is in bankruptcy, the 2006 China EBL no longer regulates super priority employees. Super priority employees now take priority after secured creditors and bankruptcy costs and before taxes and other unsecured creditors. These policies mirror many international insolvency regimes, where workers' claims (including claims to wages, leave or vacation pay, paid absence benefits, and severance pay) are a priority class in insolvency. In some cases, these claims rank higher than most priority claims, mainly taxes and social security (Perkins, 2019).

China places great emphasis on protecting employees' rights. It classifies creditors into four classes: guaranteed claims, employees' claims for wages, health insurance and other compensation, taxes payable, and unsecured claims. According to the 2006 China EBL, an employee's claim must be fully satisfied to apply for court confirmation of a plan. In contrast, in Chapter 11, a plan can be proposed even if the claim is adversely affected, as long as the classification of the claim does not unfairly discriminate. Protection for employees extends to liquidation, where employees' claims get priority in the payment schedule even before creditors' claims are guaranteed. One possible source of solid protection from employee claims is the 2006 EBL (Wen, 2021).

Table 2
China's Bankruptcy Law Decisions and Debtor Categories

Creditors Committee	The Creditors' Meeting is comprised of all creditors with legally enumerated debt. The Creditors' Meeting may establish a Creditors Committee with up to nine

	members, one of whom must represent a debtor employee.
Submission of Reorganization Plan	Six months after the Court accepts the case, the draft reorganization plan must be submitted. The court may extend the term by three months if compelling reasons are presented. If the plan is not submitted by the deadline, the reorganization is terminated and the debtor is declared insolvent and liquidated. There are no provisions for creditors and/or shareholders to submit a competition plan.
Claim Class (Paid First to Last)	Four classes of creditors: 1. secured creditors; 2. employees; 3. tax creditors; 4. ordinary creditors.

Source: analysis by authors

In accordance with these provisions, among all of a debtor's assets, priority is given to the payment of guaranteed claims. Unsecured and remaining property must be paid for after claims and guaranteed bankruptcy costs have been satisfied. Regarding bankruptcy distribution, employees' wages, labor insurance premiums, and other worker claims must be prioritized. Moreover, according to Article 113 regarding bankruptcy assets, after the costs for the bankruptcy process are financed and the debts arising for the common interests of creditors are paid off, they are liquidated in the following order: wages, medical benefits, injuries, disabilities, and pensions for disabled people and families of deceased persons owed by the bankrupt, basic premiums for old age insurance and basic health insurance premiums owed by the bankrupt, and entering into the employee's account and the compensation owed to the employee based on applicable laws and administrative regulations.

CONCLUSION

Based on the research results described above, the legal protection of workers' wage rights in bankrupt companies has not been based on social justice. The Causative Factor is the legal substance of the legal norms governing labor rights and other rights when a company goes bankrupt. The non-uniformity in question is the existence of differences regarding the priority hierarchy; where according to the Bankruptcy and PKPU Laws, those who have priority are creditors who hold material guarantee rights or separatist creditors, whereas, in the Law on General Provisions for Tax Implementation Procedures, it says that what takes precedence is bills with which the state is taxed. Another factor is the Structural Factor, in which, in the event of bankruptcy, the payment of workers/laborers' wages is taken over by a trustee appointed by the court under the supervision of a judge, replacing the authority of a bankrupt company. The most crucial Factor is the legal culture, namely, the weak legal protection of workers' wage rights in bankrupt companies, which has implications for

human rights violations, and the right to fair wages following their achievements. It cannot guarantee the continuity of their family life. Second, a social justice-based legal protection model for workers' wages in bankrupt companies will be realized if the restoration of workers' positions is carried out in the bankruptcy law, harmonization of workers' rights in bankruptcy and employment laws, elimination of the expiration date for payment of wages in bankrupt companies, and protection of workers' rights. They are, moreover, strengthening the principles of industrial relations with the Pancasila paradigm in bankrupt companies.

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